

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 58

HOUSE BILL 2008

AN ACT

AMENDING SECTIONS 32-2131, 32-2153, 32-2157, 32-2186, 32-2188, 32-2191 AND 32-2192, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 20, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 32-2188.01 THROUGH 32-2188.05; RELATING TO THE REAL ESTATE RECOVERY FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2131, Arizona Revised Statutes, is amended to
3 read:

4 32-2131. Reinstatement of license

5 A. The commissioner may reinstate a license that was issued under this
6 article and that expired or was canceled, terminated, suspended or revoked
7 as follows:

8 1. For a license that expired pursuant to section 32-2130, subsection
9 B, by renewal application pursuant to this article.

10 2. For a license canceled pursuant to section 32-2126, subsection A
11 or section 32-2129, subsection B or any other lawful authority:

12 (a) If within the license period, by reapplication and payment of
13 applicable fees.

14 (b) If after expiration of the license, by original or renewal
15 application, as appropriate, pursuant to this article.

16 3. For a license terminated pursuant to section 32-2188, subsection
17 H- 1, by:

18 (a) Repayment in full to the real estate recovery fund. ~~and by~~

19 (b) Original application pursuant to this article.

20 (c) PROVIDING EVIDENCE THAT THE JUDGMENT THAT CAUSED THE RECOVERY FUND
21 PAYMENT HAS BEEN FULLY SATISFIED.

22 4. For a license terminated pursuant to section 32-2130, subsection
23 B, by original application pursuant to this article.

24 5. For a license suspended pursuant to section 32-2153, 32-2154 or
25 32-2157 or any other lawful authority:

26 (a) If suspended for failure on the part of the licensee to meet
27 procedural or educational requirements for maintaining the license, and the
28 requirements have subsequently been fully met, and the suspension has been
29 vacated:

30 (i) If within the license period, by reapplication and payment of
31 applicable fees.

32 (ii) If after expiration of the license, by original or renewal
33 application, as appropriate, pursuant to this article.

34 (b) If suspended by order of the commissioner for a specified length
35 of time, and the suspension period has ended:

36 (i) If within the license period, by reapplication and payment of
37 applicable fees.

38 (ii) If after expiration of the license, by original or renewal
39 application, as appropriate, pursuant to this article.

40 6. For a license revoked pursuant to section 32-2153 or any other
41 lawful authority, by original application pursuant to this article.

42 7. For a license suspended or revoked by order of the commissioner and
43 this order is subsequently vacated as to the licensee, by reapplication
44 only. No fees may be assessed. The reapplication may be initiated by the
45 department on behalf of the licensee.

1 B. Except for canceled licenses, reinstatement of a license pursuant
2 to subsection A of this section shall not be made for any licensee who is the
3 subject of a department investigation into alleged violations of this chapter
4 or of a pending administrative proceeding pursuant to article 3 of this
5 chapter.

6 C. This section shall not be interpreted to lessen or reduce the
7 qualifications otherwise required of license applicants under this article
8 or the department's authority to deny a person's application for license
9 reinstatement who does not otherwise meet all of the requirements.

10 Sec. 2. Section 32-2153, Arizona Revised Statutes, is amended to read:

11 32-2153. Grounds for denial, suspension or revocation of
12 licenses; issuance of a provisional license;
13 retention of jurisdiction by commissioner;
14 definition

15 A. The commissioner may suspend or revoke a license, deny the issuance
16 of a license, issue a provisional license or deny the renewal or the right
17 of renewal of a license issued under the provisions of this chapter if it
18 appears that the holder or applicant, within five years immediately
19 preceding, in the performance of or attempt to perform any acts authorized
20 by the license or by this chapter, has:

21 1. Pursued a course of misrepresentation or made false promises,
22 either directly or through others, whether acting in the role of a licensee
23 or a principal in a transaction.

24 2. Acted for more than one party in a transaction without the
25 knowledge or consent of all parties to the transaction.

26 3. Disregarded or violated any of the provisions of this chapter or
27 any rules adopted by the commissioner.

28 4. Knowingly authorized, directed, connived at or aided in the
29 publication, advertisement, distribution or circulation of any material false
30 or misleading statement or representation concerning the licensee's business
31 or any land, cemetery property, subdivision or membership campground or
32 camping contract offered for sale, in this or any other state.

33 5. Knowingly used the term "real estate broker", "cemetery broker" or
34 "membership camping broker" without legal right to do so.

35 6. Employed any unlicensed salesperson or unlicensed associate broker.

36 7. Accepted compensation as a licensee for the performance of any of
37 the acts specified in this chapter from any person other than the licensed
38 broker to whom the licensee is licensed, the licensed professional
39 corporation of which the licensee is an officer and shareholder or the
40 licensed professional limited liability company of which the licensee is a
41 member or manager.

42 8. Represented or attempted to represent a broker other than the
43 broker to whom the salesperson or associate broker is licensed.

44 9. Failed, within a reasonable time, to account for or to remit any
45 monies, to surrender to the rightful owner any documents or other valuable

1 property coming into the licensee's possession and that belongs to others,
2 or to issue an appraisal report on real property or cemetery property in
3 which the licensee has an interest, unless the nature and extent of the
4 interest are fully disclosed in the report.

5 10. Paid or received any rebate, profit, compensation or commission in
6 violation of this chapter.

7 11. Induced any party to a contract to break the contract for the
8 purpose of substituting a new contract with the same or a different
9 principal, if the substitution is motivated by the personal gain of the
10 licensee.

11 12. Placed a sign on any property offering it for sale or for rent
12 without the written authority of the owner or the owner's authorized agent.

13 13. Solicited, either directly or indirectly, prospects for the sale,
14 lease or use of real property, cemetery property or membership camping
15 contracts through a promotion of a speculative nature involving a game of
16 chance or risk or through conducting lotteries or contests that are not
17 specifically authorized under the provisions of this chapter.

18 14. Failed to pay to the commissioner the biennial renewal fee as
19 specified in this chapter promptly and before the time specified.

20 15. Failed to keep an escrow or trust account or other record of funds
21 deposited with the licensee relating to a real estate transaction.

22 16. Commingled the money or other property of the licensee's principal
23 or client with the licensee's own or converted that money or property to the
24 licensee or another.

25 17. Failed or refused upon demand to produce any document, contract,
26 book, record, information, compilation or report that is in the licensee's
27 possession or that the licensee is required by law to maintain concerning any
28 real estate, cemetery or membership camping business, services, activities
29 or transactions involving or conducted by the licensee for inspection by the
30 commissioner or the commissioner's representative.

31 18. Failed to maintain a complete record of each transaction which
32 comes within the provisions of this chapter.

33 19. Violated the federal fair housing law, the Arizona civil rights law
34 or any local ordinance of a similar nature.

35 20. Tendered to a buyer a wood infestation report in connection with
36 the transfer of residential real property or an interest in residential real
37 property knowing that wood infestation exists or that the wood infestation
38 report was inaccurate or false as of the date of the tender or that an
39 inspection was not done in conjunction with the preparation of the wood
40 infestation report.

41 21. As a licensed broker, failed to exercise reasonable supervision
42 over the activities of salespersons, associate brokers or others under the
43 broker's employ or failed to exercise reasonable supervision and control over
44 the activities for which a license is required of a corporation, limited

1 liability company or partnership on behalf of which the broker acts as
2 designated broker under section 32-2125.

3 22. Demonstrated negligence in performing any act for which a license
4 is required.

5 23. Sold or leased a property to a buyer or lessee that was not the
6 property represented to the buyer or lessee.

7 24. Violated any condition or term of a commissioner's order.

8 25. Signed the name of another person on any document or form without
9 the express written consent of the person.

10 8. The commissioner may suspend or revoke a license, deny the issuance
11 of a license, issue a provisional license or deny the renewal or the right
12 of renewal of a license issued under the provisions of this chapter when it
13 appears that the holder or applicant therefor has:

14 1. Procured or attempted to procure a license under the provisions of
15 this chapter for himself or another by fraud, misrepresentation or deceit,
16 or by filing an original or renewal application which is false or misleading.

17 2. Been convicted in a court of competent jurisdiction in this or any
18 other state of a felony or of any crime of forgery, theft, extortion,
19 conspiracy to defraud, a crime of moral turpitude or any other like offense.

20 3. Made any substantial misrepresentation.

21 4. Made any false promises of a character likely to influence,
22 persuade or induce.

23 5. Been guilty of any conduct, whether of the same or a different
24 character than specified in this section, which constitutes fraud or
25 dishonest dealings.

26 6. Engaged in the business of a real estate, cemetery or membership
27 camping broker or real estate, cemetery or membership camping salesperson
28 without holding a license as prescribed in this chapter.

29 7. Not shown that the holder or applicant is a person of honesty,
30 truthfulness and good character.

31 8. Demonstrated incompetence to perform any duty or requirement of a
32 licensee under or arising from this chapter.

33 9. Violated the terms of any criminal or administrative order, decree
34 or sentence.

35 10. Violated any federal or state law, regulation or rule that relates
36 to real estate or securities or that involves forgery, theft, extortion,
37 fraud, substantial misrepresentation, dishonest dealings or violence against
38 another person or failure to deal fairly with any party to a transaction that
39 materially and adversely affected the transaction. This paragraph applies
40 equally to violations of which the licensee was convicted in any lawful
41 federal or state tribunal and to any admissions made in any settlement
42 agreement by the licensee to violations.

43 C. A JUDGMENT BASED ON A COURT'S FINDING OR STIPULATION OF FRAUD BY
44 A LICENSEE FOLLOWING A TRIAL ON THE MERITS OR A CRIMINAL CONVICTION OF A
45 LICENSEE THAT RESULTS IN A PAYMENT FROM THE REAL ESTATE RECOVERY FUND IS

1 PRIMA FACIE EVIDENCE OF A VIOLATION AND GROUNDS FOR DISCIPLINE UNDER THIS
2 SECTION.

3 ~~C.~~ D. The commissioner may deny, suspend or revoke the issuance of
4 a license upon application by a corporation, a limited liability company or
5 a partnership if it appears that an owner, officer, director, member,
6 manager, partner, stockholder owning ten per cent or more of the stock in the
7 corporation or limited liability company or person exercising control of the
8 entity is a current or former licensee whose license as a broker or a
9 salesperson has been denied, suspended or revoked.

10 ~~D.~~ E. The lapsing or suspension of a license by operation of law or
11 by order or decision of the commissioner or a court of law or the voluntary
12 surrender of a license by a licensee shall not deprive the commissioner of
13 jurisdiction to do any of the following:

14 1. Proceed with any investigation of or action or disciplinary
15 proceeding against the licensee.

16 2. Render a decision suspending or revoking the license, or denying
17 the renewal or right of renewal of the license.

18 3. Assess a civil penalty pursuant to section 32-2160.01.

19 ~~E.~~ F. For the purposes of this section, "provisional license" means
20 a license that the department issues and that allows a licensee to practice
21 as a salesperson or broker subject to either a consent order as prescribed
22 in section 32-2153.01 or the commissioner's terms, conditions and
23 restrictions.

24 Sec. 3. Section 32-2157, Arizona Revised Statutes, is amended to read:

25 32-2157. Commissioner action requiring commissioner to present
26 respondent with written complaint and notice;
27 summary suspension; hearing

28 A. Except as provided in subsection B of this section, before
29 suspending, revoking or denying the renewal or the right of renewal of any
30 license, or issuing any order prohibiting the sale or lease of property or
31 the sale of cemetery lots or membership camping contracts as provided by this
32 chapter, the commissioner shall present the licensee, owner, operator, agent
33 or developer with written notice of the charges filed against the person, or
34 reasons for prohibiting the sale or lease, and shall afford the person an
35 opportunity for a hearing pursuant to title 41, chapter 6, article
36 10. Within twenty days after service of a notice of hearing, the respondent
37 shall appear by filing a written answer to the complaint.

38 B. If the commissioner finds that the public health, safety or welfare
39 imperatively requires emergency action, and incorporates a finding to that
40 effect in the commissioner's order, summary suspension of a license or sales
41 may be ordered. Grounds for issuance of an order of summary suspension
42 include the violation of any of the provisions of section
43 32-2153, ~~subsection B~~ and the termination of a license pursuant to section
44 32-2188, subsection H- I. A licensee, owner, operator, agent or developer
45 may request a hearing pursuant to title 41, chapter 6, article 10. A summary

1 suspension shall be deemed to be final if a request for a hearing is not
2 received within thirty days as provided by section 41-1092.03.

3 C. The department may issue a summary suspension when the department
4 receives notice that a person licensed pursuant to this chapter has been
5 convicted of a felony offense and is currently incarcerated for the
6 conviction, paroled or under the supervision of a parole or community
7 supervision officer or is on probation as a result of the conviction. This
8 subsection does not limit the commissioner's authority to seek revocation of
9 a license or other disciplinary action pursuant to this chapter.

10 Sec. 4. Section 32-2186, Arizona Revised Statutes, is amended to read:

11 32-2186. Use of fund; liability limits; definitions

12 A. ~~The commissioner is authorized and directed to~~ SHALL establish and
13 maintain a real estate recovery fund for the benefit of any person aggrieved
14 by any act, representation, transaction or conduct of a licensed real estate
15 or cemetery broker or real estate or cemetery salesperson that violates this
16 chapter or the rules adopted pursuant to this chapter. The fund shall only
17 pay for a loss that is an actual and direct out-of-pocket loss to the
18 aggrieved person directly arising out of the real estate or cemetery
19 transaction, including reasonable attorney fees and court costs, in which the
20 licensee either:

21 1. Performed acts that required a real estate or cemetery license
22 pursuant to this chapter.

23 2. Engaged in fraud or misrepresentation while acting as a principal
24 in the purchase or sale of real property and the aggrieved person relied on
25 the broker's or salesperson's licensed status.

26 B. The fund's liability shall not exceed:

27 1. Thirty thousand dollars for each transaction, regardless of the
28 number of persons aggrieved or the number of licensees or parcels of real
29 estate involved.

30 2. Ninety thousand dollars for each licensee.

31 C. The liability of the fund for the acts of a licensed real estate
32 or cemetery broker or real estate or cemetery salesperson is terminated upon
33 the issuance of court orders authorizing payments from the fund in an
34 aggregate amount as prescribed by subsection B OF THIS SECTION.

35 D. A licensee acting as a principal or agent in a real estate
36 transaction has no claim against the fund, including marital communities,
37 corporations, limited liability companies and partnerships in which the
38 licensee is a principal, member, general partner, officer or director, or
39 those entities in which the licensee holds a direct or indirect interest of
40 at least ten per cent.

41 E. The fund is liable to pay only against the license of a natural
42 person, not on that of a corporation, a partnership or any other fictitious
43 entity.

44 F. The fund is liable to pay only for damages arising out of a
45 transaction in which the defendant licensee performed acts for which a real

1 estate or cemetery license was required or when the defendant licensee, while
2 acting as principal in the purchase or sale of real property, engaged in
3 fraud or misrepresentation and the aggrieved person was harmed due to
4 reliance on the defendant's licensed status.

5 G. The fund shall IS not be liable for damages or losses resulting
6 from or caused by:

7 ~~1. A person who held an inactive license at the time of the violation.~~

8 ~~2. 1. Speculation, including lost profits and other unrealized~~
9 ~~losses.~~

10 ~~3. 2. Transactions for property that is located outside of this~~
11 ~~state.~~

12 ~~4. 3. Loans, notes, limited partnerships or other securities,~~
13 ~~regardless of whether the loss was caused by an investment in or was secured~~
14 ~~by real property.~~

15 ~~5. 4. A judgment entered against a bonding company if the bonding~~
16 ~~company is not a principal in the underlying real estate transaction.~~

17 ~~6. 5. A tenant's conduct or neglect.~~

18 ~~7. 6. Vandalism.~~

19 ~~8. 7. Natural causes.~~

20 ~~9. 8. Punitive damages.~~

21 ~~10. 9. Postjudgment interest.~~

22 ~~11. 10. Undocumented transactions or losses.~~

23 ~~H. An aggrieved person is required to submit to the department, at or~~
24 ~~before the time the person files an application for payment from the fund,~~
25 ~~copies of contracts, documents and receipts from the transaction, copies of~~
26 ~~all existing recorded judgments, documentation of actual and direct~~
27 ~~out-of-pocket losses and any offsetting payments received and all collection~~
28 ~~efforts attempted, and a verified statement of calculations supporting the~~
29 ~~amount claimed.~~

30 H. IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

31 1. "JUDGMENT" MEANS EITHER:

32 (a) A FINAL JUDGMENT IN A COURT OF COMPETENT JURISDICTION.

33 (b) A CRIMINAL RESTITUTION ORDER ISSUED PURSUANT TO SECTION 13-603 OR
34 18 UNITED STATES CODE SECTION 3663.

35 (c) AN ARBITRATION AWARD THAT INCLUDES FINDINGS OF FACT AND
36 CONCLUSIONS OF LAW, THAT HAS BEEN CONFIRMED AND REDUCED TO JUDGMENT PURSUANT
37 TO SECTION 12-133 AND THAT WAS RENDERED ACCORDING TO TITLE 12 AND THE RULES
38 OF THE AMERICAN ARBITRATION ASSOCIATION OR ANOTHER RECOGNIZED ARBITRATION
39 BODY.

40 2. "JUDGMENT DEBTOR" MEANS ANY DEFENDANT UNDER THIS ARTICLE WHO IS THE
41 SUBJECT OF A JUDGMENT.

1 Sec. 5. Section 32-2188, Arizona Revised Statutes, is amended to read:
2 32-2188. Statute of limitations; service of summons;
3 application for payment; insufficient monies;
4 definition

5 A. An action for a judgment which THAT subsequently results in an
6 order for collection PAYMENT from the real estate recovery fund shall not be
7 started later than five years from the accrual of the cause of action. If
8 any aggrieved person commences an action for a judgment which may result in
9 collection from the real estate recovery fund, the aggrieved person shall
10 notify the commissioner in writing, by certified mail, return receipt
11 requested, within forty-five days of commencing the action. The notice
12 described in this subsection shall be addressed to the recovery fund
13 administrator. The commissioner may intervene in and defend any such action.

14 B. If an aggrieved person commences an action for a judgment which
15 THAT may result in an order for collection PAYMENT from the real estate
16 recovery fund, and the defendant licensee cannot be served process personally
17 in this state, the summons may be served by the alternative methods of
18 service provided for by the Arizona rules of civil procedure, including
19 service by publication. A judgment THAT COMPLIES WITH THE PROVISIONS OF THIS
20 SECTION AND THAT WAS obtained after service by publication only applies to
21 and is enforceable against the real estate recovery fund. The department may
22 intervene in and defend any such action.

23 C. ~~If an aggrieved person recovers a valid judgment in any court of~~
24 ~~competent jurisdiction against any real estate or cemetery broker or~~
25 ~~salesperson for any act, representation, transaction or conduct which is in~~
26 ~~violation of the provisions of this chapter or the rules adopted pursuant to~~
27 ~~this chapter, the aggrieved person may, upon the termination of all~~
28 ~~proceedings, including reviews and appeals in connection with the judgment,~~
29 ~~file a verified application for an order directing payment from the real~~
30 ~~estate recovery fund of the amount unpaid on the judgment, subject to the~~
31 ~~limitations stated in this article. The application shall be filed in~~
32 ~~superior court in the county in which the judgment was entered or in which~~
33 ~~a judgment or transcript of judgment from a lower court has been filed~~
34 ~~pursuant to section 33-962. The aggrieved person shall serve the application~~
35 ~~on the commissioner and the judgment debtor. Service on the commissioner~~
36 ~~shall be by certified mail, return receipt requested, addressed to the~~
37 ~~recovery fund administrator. The commissioner and the judgment debtor each~~
38 ~~shall have thirty-five days after being served with the application within~~
39 ~~which to file a written response. The court shall thereafter set the matter~~
40 ~~for hearing on petition of the applicant. The court may, upon a showing of~~
41 ~~good cause by any party, continue the hearing for such time as the court~~
42 ~~deems appropriate. If the judgment debtor fails to file a written response~~
43 ~~to the application, the applicant's claim may be compromised or settled by~~
44 ~~the commissioner without a hearing and the court, on joint petition of the~~

1 ~~applicant and the commissioner, shall issue an order directing payment out~~
2 ~~of the real estate recovery fund.~~

3 ~~B. The court shall proceed upon the application in a summary manner,~~
4 ~~and, upon the hearing, the aggrieved person shall be required to show that~~
5 ~~the aggrieved person:~~

6 ~~1. Is not a spouse of the debtor, or the personal representative of~~
7 ~~such spouse.~~

8 ~~2. Has complied with all the requirements of this article, except~~
9 ~~that, upon application by the aggrieved person, the commissioner may waive~~
10 ~~the notification requirement in subsection A of this section, if the~~
11 ~~commissioner determines that:~~

12 ~~(a) The public interest is best served by the waiver.~~

13 ~~(b) The aggrieved person made a good faith effort to comply with the~~
14 ~~requirements of subsection A of this section.~~

15 ~~3. Has obtained a judgment as set out in subsection C of this section,~~
16 ~~stating the amount of the judgment and the amount owing on the judgment at~~
17 ~~the date of the application and that in such action the aggrieved person had~~
18 ~~joined any and all bonding companies which issued surety bonds to the~~
19 ~~judgment debtors as principals.~~

20 ~~4. Has not omitted from the complaint any party who is potentially~~
21 ~~liable for damages or dismissed any party who is named in the complaint and~~
22 ~~who otherwise appeared capable of responding in damages and the aggrieved~~
23 ~~person has employed no other procedural tactics contrary to the diligent~~
24 ~~prosecution of the complaint in order to provide access to the recovery fund.~~

25 ~~5. Has recorded a certified copy of the superior court judgment or~~
26 ~~transcript of judgment as provided in sections 33-961 and 33-962 in the~~
27 ~~county where the action is pending and in the county where all judgment~~
28 ~~debtors reside and has provided a copy of the recorded judgment to the~~
29 ~~commissioner.~~

30 ~~6. Has caused to be issued a writ of execution upon the judgment and~~
31 ~~the officer executing the writ has made a return showing that no personal or~~
32 ~~real property of the judgment debtor liable to be levied upon in satisfaction~~
33 ~~of the judgment could be found, or that the amount realized on the sale of~~
34 ~~the property or of such property as was found, under such execution, was~~
35 ~~insufficient to satisfy the judgment, stating the amount so realized and the~~
36 ~~balance remaining due on the judgment after deducting the amount realized.~~

37 ~~7. Has caused the judgment debtor to make discovery under oath,~~
38 ~~pursuant to section 12-1631, concerning the debtor's property.~~

39 ~~8. Has made all reasonable searches and inquiries to ascertain whether~~
40 ~~the judgment debtor possesses real or personal property or other assets~~
41 ~~liable to be sold or applied in satisfaction of the judgment.~~

42 ~~9. By searching has discovered no personal or real property or other~~
43 ~~assets liable to be sold or applied, or has discovered certain property,~~
44 ~~describing it, owned by the judgment debtor and liable to be so applied, and~~
45 ~~has taken all necessary action and proceedings for the realization, and that~~

1 ~~the amount realized was insufficient to satisfy the judgment, stating the~~
2 ~~amount so realized and the balance remaining due on the judgment after~~
3 ~~deducting the amount realized.~~

4 ~~10. Has diligently pursued collection efforts against other judgment~~
5 ~~debtors and all other persons liable to the applicant in the transaction that~~
6 ~~forms the basis for the underlying judgment.~~

7 ~~11. Has deducted from the actual or compensatory damages awarded by the~~
8 ~~court:~~

9 ~~(a) Any amount recovered or anticipated from the judgment debtor or~~
10 ~~debtors.~~

11 ~~(b) Any amount recovered or anticipated from the bonding, insurance~~
12 ~~or title company or companies, including recovery of punitive damages.~~

13 ~~(c) Any amount recovered or anticipated in out of court settlements~~
14 ~~as to particular defendants.~~

15 ~~(d) Any amount of tax benefits accrued or taken as deductions on~~
16 ~~federal, state or local income tax returns.~~

17 C. AN AGGRIEVED PERSON MAY APPLY TO THE DEPARTMENT FOR PAYMENT FROM
18 THE REAL ESTATE RECOVERY FUND AFTER THE AGGRIEVED PERSON OBTAINS A JUDGMENT
19 AGAINST A REAL ESTATE OR CEMETERY BROKER OR SALESPERSON BASED ON THE
20 LICENSEE'S ACT, REPRESENTATION, TRANSACTION OR CONDUCT IN VIOLATION OF THIS
21 CHAPTER OR THE RULES ADOPTED PURSUANT TO THIS CHAPTER. THE CLAIMANT MUST
22 FILE THE ORIGINAL APPLICATION, INCLUDING APPENDICES, WITHIN TWO YEARS AFTER
23 THE TERMINATION OF ALL PROCEEDINGS, REVIEWS AND APPEALS CONNECTED WITH THE
24 JUDGMENT. THE COMMISSIONER, IN THE COMMISSIONER'S SOLE DISCRETION, MAY WAIVE
25 THE TWO-YEAR APPLICATION DEADLINE IF THE COMMISSIONER DETERMINES THAT THE
26 WAIVER BEST SERVES THE PUBLIC INTEREST. DELIVERY OF THE APPLICATION MUST BE
27 BY PERSONAL SERVICE OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

28 D. THE APPLICATION MUST BE WITHIN THE LIMITATIONS PRESCRIBED IN
29 SECTION 32-2186 FOR THE AMOUNT UNPAID ON THE JUDGMENT THAT REPRESENTS THE
30 CLAIMANT'S ACTUAL AND DIRECT LOSS ON THE TRANSACTION.

31 E. THE DEPARTMENT SHALL PRESCRIBE AND SUPPLY AN APPLICATION FORM THAT
32 INCLUDES DETAILED INSTRUCTIONS WITH RESPECT TO DOCUMENTARY EVIDENCE,
33 PLEADINGS, COURT RULINGS, THE PRODUCTS OF DISCOVERY IN THE UNDERLYING
34 LITIGATION AND NOTICE REQUIREMENTS TO THE JUDGMENT DEBTOR UNDER SECTION
35 32-2188.01. THE CLAIMANT MUST SUBMIT THE CLAIM ON AN APPLICATION FORM
36 SUPPLIED BY THE DEPARTMENT. THE APPLICATION MUST INCLUDE:

37 1. THE CLAIMANT'S NAME AND ADDRESS.
38 2. IF THE CLAIMANT IS REPRESENTED BY AN ATTORNEY, THE ATTORNEY'S NAME,
39 BUSINESS ADDRESS AND TELEPHONE NUMBER.

40 3. THE JUDGMENT DEBTOR'S NAME AND ADDRESS OR, IF UNKNOWN, THE NAMES
41 AND ADDRESSES OF PERSONS WHO MAY KNOW THE JUDGMENT DEBTOR'S PRESENT LOCATION.

42 4. A DETAILED NARRATIVE STATEMENT OF THE FACTS EXPLAINING THE
43 ALLEGATIONS OF THE COMPLAINT ON WHICH THE UNDERLYING JUDGMENT IS BASED, WITH
44 A COPY OF THE CONTRACTS, RECEIPTS AND OTHER DOCUMENTS FROM THE TRANSACTION,
45 THE LAST AMENDED COMPLAINT, ALL EXISTING RECORDED JUDGMENTS, DOCUMENTATION

1 OF ACTUAL AND DIRECT OUT-OF-POCKET LOSSES AND ANY OFFSETTING PAYMENT RECEIVED
2 AND ALL COLLECTION EFFORTS ATTEMPTED.

3 5. THE IDENTIFICATION OF THE JUDGMENT, THE AMOUNT OF THE CLAIM AND AN
4 EXPLANATION OF ITS COMPUTATION, INCLUDING AN ITEMIZED LIST OF ACTUAL AND
5 COMPENSATORY DAMAGES AWARDED AND CLAIMED.

6 6. FOR THE PURPOSE OF AN APPLICATION THAT IS NOT BASED ON A CRIMINAL
7 RESTITUTION ORDER, A STATEMENT BY THE CLAIMANT, SIGNED UNDER PENALTY OF
8 PERJURY, THAT THE COMPLAINT ON WHICH THE UNDERLYING JUDGMENT IS BASED WAS
9 PROSECUTED CONSCIENTIOUSLY AND IN GOOD FAITH. FOR THE PURPOSES OF THIS
10 PARAGRAPH, "CONSCIENTIOUSLY AND IN GOOD FAITH" MEANS THAT ALL OF THE
11 FOLLOWING APPLY:

12 (a) NO PARTY THAT WAS POTENTIALLY LIABLE TO THE CLAIMANT IN THE
13 UNDERLYING TRANSACTION WAS INTENTIONALLY AND WITHOUT GOOD CAUSE OMITTED FROM
14 THE COMPLAINT.

15 (b) NO PARTY NAMED IN THE COMPLAINT WHO OTHERWISE REASONABLY APPEARED
16 CAPABLE OF RESPONDING IN DAMAGES WAS DISMISSED FROM THE COMPLAINT
17 INTENTIONALLY AND WITHOUT GOOD CAUSE.

18 (c) THE CLAIMANT EMPLOYED NO OTHER PROCEDURAL MEANS CONTRARY TO THE
19 DILIGENT PROSECUTION OF THE COMPLAINT IN ORDER TO SEEK TO QUALIFY FOR THE
20 RECOVERY FUND.

21 7. FOR THE PURPOSE OF AN APPLICATION THAT IS BASED ON A CRIMINAL
22 RESTITUTION ORDER, ALL OF THE FOLLOWING STATEMENTS BY THE CLAIMANT, SIGNED
23 UNDER PENALTY OF PERJURY:

24 (a) THE CLAIMANT HAS NOT INTENTIONALLY AND WITHOUT GOOD CAUSE FAILED
25 TO PURSUE ANY PERSON POTENTIALLY LIABLE TO THE CLAIMANT IN THE UNDERLYING
26 TRANSACTION OTHER THAN A DEFENDANT WHO IS THE SUBJECT OF A CRIMINAL
27 RESTITUTION ORDER.

28 (b) THE CLAIMANT HAS NOT INTENTIONALLY AND WITHOUT GOOD CAUSE FAILED
29 TO PURSUE IN A CIVIL ACTION FOR DAMAGES ALL PERSONS POTENTIALLY LIABLE TO THE
30 CLAIMANT IN THE UNDERLYING TRANSACTION WHO OTHERWISE REASONABLY APPEARED
31 CAPABLE OF RESPONDING IN DAMAGES OTHER THAN A DEFENDANT WHO IS THE SUBJECT
32 OF A CRIMINAL RESTITUTION ORDER.

33 (c) THE CLAIMANT EMPLOYED NO OTHER PROCEDURAL MEANS CONTRARY TO THE
34 DILIGENT PROSECUTION OF THE COMPLAINT IN ORDER TO SEEK TO QUALIFY FOR THE
35 RECOVERY FUND.

36 8. THE FOLLOWING STATEMENTS, SIGNED UNDER PENALTY OF PERJURY, AND
37 INFORMATION FROM THE CLAIMANT:

38 (a) THE CLAIMANT IS NOT A SPOUSE OF THE JUDGMENT DEBTOR OR A PERSONAL
39 REPRESENTATIVE OF THE SPOUSE.

40 (b) THE CLAIMANT HAS COMPLIED WITH ALL OF THE REQUIREMENTS OF THIS
41 ARTICLE.

42 (c) THE JUDGMENT UNDERLYING THE CLAIM MEETS THE REQUIREMENTS OF THIS
43 ARTICLE.

44 (d) THE CLAIMANT HAS RECORDED A CERTIFIED COPY OF THE SUPERIOR COURT
45 JUDGMENT OR TRANSCRIPT OF JUDGMENT PURSUANT TO SECTIONS 33-961 AND 33-962 IN

1 THE COUNTY WHERE THE JUDGMENT WAS OBTAINED AND IN THE COUNTY WHERE ALL
2 JUDGMENT DEBTORS RESIDE AND HAS PROVIDED A COPY OF THE RECORDED JUDGMENT TO
3 THE COMMISSIONER.

4 (e) THE CLAIMANT HAS CAUSED THE JUDGMENT DEBTOR TO MAKE DISCOVERY
5 UNDER OATH, PURSUANT TO SECTION 12-1631, CONCERNING THE DEBTOR'S PROPERTY.

6 (f) THE CLAIMANT HAS CAUSED A WRIT OF EXECUTION TO BE ISSUED ON THE
7 JUDGMENT AND THE OFFICER EXECUTING THE WRIT HAS MADE A RETURN SHOWING EITHER:

8 (i) THAT NO PERSONAL OR REAL PROPERTY OF THE JUDGMENT DEBTOR LIABLE
9 TO BE LEVIED ON IN SATISFACTION OF THE JUDGMENT COULD BE FOUND, SOLD OR
10 APPLIED.

11 (ii) THAT THE AMOUNT REALIZED ON THE SALE OF THE PROPERTY, OR AS MUCH
12 OF THE PROPERTY THAT WAS FOUND, UNDER THE EXECUTION WAS INSUFFICIENT TO
13 SATISFY THE JUDGMENT.

14 (g) THE CLAIMANT HAS CAUSED A WRIT OF GARNISHMENT TO BE ISSUED TO EACH
15 KNOWN EMPLOYER OF THE JUDGMENT DEBTOR ASCERTAINED BY THE CLAIMANT, THAT EACH
16 GARNISHEE-DEFENDANT HAS COMPLIED WITH THE RESPECTIVE WRIT AND ANY JUDGMENT
17 OR ORDER RESULTING FROM THE WRIT AND THAT THE AMOUNT REALIZED FROM ALL
18 JUDGMENTS AGAINST THE GARNISHEE-DEFENDANTS WAS INSUFFICIENT TO SATISFY THE
19 BALANCE DUE ON THE JUDGMENT.

20 (h) THE CLAIMANT HAS DEDUCTED THE FOLLOWING AMOUNTS FROM THE ACTUAL
21 OR COMPENSATORY DAMAGES AWARDED BY THE COURT:

22 (i) ANY AMOUNT RECOVERED OR ANTICIPATED FROM THE JUDGMENT DEBTOR OR
23 DEBTORS.

24 (ii) ANY AMOUNT RECOVERED THROUGH COLLECTION EFFORTS UNDERTAKEN
25 PURSUANT TO SUBDIVISIONS (d) THROUGH (g) OF THIS PARAGRAPH AND INCLUDING AN
26 ITEMIZED VALUATION OF THE ASSETS DISCOVERED AND AMOUNTS APPLIED.

27 (iii) ANY AMOUNT RECOVERED OR ANTICIPATED FROM BONDING, INSURANCE OR
28 TITLE COMPANIES, INCLUDING RECOVERY OF PUNITIVE DAMAGES.

29 (iv) ANY AMOUNT RECOVERED OR ANTICIPATED FROM IN-COURT OR OUT-OF-COURT
30 SETTLEMENTS.

31 (v) ANY AMOUNT OF TAX BENEFITS ACCRUED OR TAKEN AS DEDUCTIONS ON
32 FEDERAL, STATE OR LOCAL INCOME TAX RETURNS.

33 F. IF THE CLAIM IS BASED ON A JUDGMENT AGAINST A SALESPERSON OR BROKER
34 AND THE CLAIMANT HAS NOT OBTAINED A JUDGMENT AGAINST THE SALESPERSON'S OR
35 BROKER'S EMPLOYING BROKER, IF ANY, OR HAS NOT DILIGENTLY PURSUED THE ASSETS
36 OF THE EMPLOYING BROKER, THE DEPARTMENT SHALL DENY THE CLAIM FOR FAILURE TO
37 DILIGENTLY PURSUE THE ASSETS OF ALL OTHER PERSONS LIABLE TO THE CLAIMANT IN
38 THE TRANSACTION UNLESS THE CLAIMANT DEMONSTRATES, BY CLEAR AND CONVINCING
39 EVIDENCE, THAT EITHER:

40 1. THE SALESPERSON OR BROKER WAS NOT EMPLOYED BY A BROKER AT THE TIME
41 OF THE TRANSACTION.

42 2. THE SALESPERSON'S OR BROKER'S EMPLOYING BROKER WOULD NOT HAVE BEEN
43 LIABLE TO THE CLAIMANT BECAUSE THE SALESPERSON OR BROKER ACTED OUTSIDE THE
44 SCOPE OF EMPLOYMENT IN THE TRANSACTION.

1 E. G. The court COMMISSIONER, AT THE COMMISSIONER'S SOLE DISCRETION,
2 may dispense with the necessity to comply WAIVE COMPLIANCE with one or more
3 of the requirements enumerated in subsection D, paragraphs 6, 7, 8, 9 and 11
4 E, PARAGRAPH 8 OR SUBSECTION F of this section IF THE CLAIM IS BASED ON AN
5 AWARD PURSUANT TO A CRIMINAL RESTITUTION ORDER OR if the court COMMISSIONER
6 is satisfied that the aggrieved person CLAIMANT has taken all reasonable
7 steps to collect the amount of the judgment or the unsatisfied part of the
8 judgment from all judgment debtors but has been unable to collect.

9 F. ~~The court shall make an order directed to the commissioner~~
10 ~~requiring payment from the real estate recovery fund of whatever sum it finds~~
11 ~~to be payable upon the application, pursuant to the provisions of and in~~
12 ~~accordance with the limitations contained in this section, if the court is~~
13 ~~satisfied, upon the hearing, of the truth of all matters required to be shown~~
14 ~~by the aggrieved person by subsection D of this section and that the~~
15 ~~aggrieved person has fully pursued and exhausted all remedies available for~~
16 ~~recovering the amount awarded by the judgment of the court. The commissioner~~
17 ~~may defend any such action on behalf of the real estate recovery fund and has~~
18 ~~recourse to all appropriate means of defense and review, including the~~
19 ~~examination of witnesses and the right to relitigate any material and~~
20 ~~relevant issues in the proceedings against the real estate recovery fund~~
21 ~~which were determined in the underlying action on which the judgment in favor~~
22 ~~of the applicant was based. If the judgment in favor of the applicant was~~
23 ~~by default, stipulation or consent, or if the action against the licensee was~~
24 ~~defended by a trustee in bankruptcy, the applicant has the burden of proving~~
25 ~~that the cause of action against the licensee was for a violation of the~~
26 ~~provisions of this chapter or the rules adopted pursuant to this~~
27 ~~chapter. Otherwise the judgment creates a rebuttable presumption that the~~
28 ~~licensee violated the provisions of this chapter or the rules adopted~~
29 ~~pursuant to this chapter. The commissioner, with court approval, may~~
30 ~~compromise a claim based on the application of an aggrieved person. The~~
31 ~~commissioner is not bound by any prior compromise stipulation of the judgment~~
32 ~~debtor. The judgment debtor may defend an action against the real estate~~
33 ~~recovery fund on the debtor's own behalf and has recourse to all appropriate~~
34 ~~means of defense and review, including the examination of witnesses. All~~
35 ~~matters finally adjudicated in the underlying action are conclusive as to the~~
36 ~~judgment debtor and the applicant in the proceeding against the real estate~~
37 ~~recovery fund.~~

38 G. H. If the commissioner finds it is likely that the total remaining
39 liability of the recovery fund is insufficient to pay in full the valid
40 claims of all aggrieved persons who may have claims against any one licensee,
41 the commissioner may petition the court to initiate a proration
42 proceeding. The court shall grant the petition and order a hearing to
43 distribute the total remaining liability of the fund among the applicants in
44 the ratio that their respective claims bear to the aggregate of the valid
45 claims or in such other manner as the court deems equitable. The

1 commissioner or any party may file a proposed plan for equitable distribution
2 of the available monies. The distribution of monies shall be among the
3 persons entitled to share them, without regard to the order of priority in
4 which their respective judgments may have been obtained or their respective
5 applications may have been filed. The court may require all applicants and
6 prospective applicants against one licensee to be joined in one action, to
7 the end that the respective rights of all the applicants to the recovery fund
8 may be equitably adjudicated and settled. The court shall not include in the
9 claims for proration the claim of any person who has not, within ninety days
10 after the court has entered the order for proration, filed a court complaint
11 WITH THE COURT, served the licensee and ~~filed notice of a claim with the~~
12 ~~commissioner as required by subsection A of this section~~ PROVIDED WRITTEN
13 NOTICE OF THE CLAIM TO THE COMMISSIONER. The liability of the fund on any
14 application affected by a proration proceeding is based on the limits in
15 effect on the date when the last application for payment is filed. The court
16 may refuse to consider or award prorated recovery to any person who fails to
17 expeditiously prosecute a claim against the licensee or promptly file an
18 application for payment and submit supporting documentation as required by
19 this article.

20 H. I. If the commissioner pays from the real estate recovery fund any
21 amount in settlement of an applicant's claim or toward satisfaction of a
22 judgment against a licensed broker, designated broker for a corporation or
23 salesperson, the license of the broker, designated broker for a corporation
24 or salesperson shall be automatically terminated upon the issuance of a court
25 AN order authorizing payment from the real estate recovery fund. A broker,
26 designated broker for a corporation or salesperson is not eligible to receive
27 a new license until the licensee has repaid in full, plus interest at the
28 rate provided by section 44-1201, subsection A, the amount paid from the real
29 estate recovery fund on the licensee's account and has provided evidence to
30 the commissioner that the judgment has been fully satisfied.

31 I. J. If, at any time, the money deposited in the real estate
32 recovery fund is insufficient to satisfy any duly authorized claim or portion
33 of a claim, the commissioner shall, when sufficient money has been deposited
34 in the real estate recovery fund, satisfy the unpaid claims or portions of
35 claims, in the order that the claims or portions of claims were originally
36 filed, plus accumulated interest at the rate of four per cent a year.

37 K. FOR THE PURPOSES OF THIS SECTION, "COMPLAINT" MEANS THE FACTS OF
38 THE TRANSACTION ON WHICH THE JUDGMENT IS BASED.

39 Sec. 6. Title 32, chapter 20, article 5, Arizona Revised Statutes, is
40 amended by adding sections 32-2188.01 through 32-2188.05, to read:

41 32-2188.01. Notice of claim to judgment debtor; response

42 A. WITHIN THE SAME TIME PRESCRIBED BY SECTION 32-2188, SUBSECTION C
43 FOR APPLYING FOR PAYMENT FROM THE REAL ESTATE RECOVERY FUND, AN AGGRIEVED
44 PARTY WHO APPLIES FOR PAYMENT SHALL SERVE NOTICE OF THE CLAIM ON THE JUDGMENT

DEBTOR, TOGETHER WITH A COPY OF THE APPLICATION. THE NOTICE SHALL BE IN THE FOLLOWING FORM:

NOTICE

BASED ON A JUDGMENT AGAINST YOU IN FAVOR OF (ENTER NAME OF CLAIMANT), APPLICATION IS BEING MADE TO THE ARIZONA STATE REAL ESTATE DEPARTMENT FOR PAYMENT FROM THE REAL ESTATE RECOVERY FUND.

IF PAYMENT IS MADE FROM THE REAL ESTATE RECOVERY FUND, ALL LICENSES AND LICENSE RIGHTS THAT YOU HAVE UNDER THE ARIZONA REAL ESTATE LAW WILL BE AUTOMATICALLY TERMINATED ON THE DATE OF PAYMENT AND MAY ONLY BE REINSTATED PURSUANT TO SECTION 32-2131, SUBSECTION A, PARAGRAPH 3, ARIZONA REVISED STATUTES, ON A SHOWING THAT 1) THE REAL ESTATE RECOVERY FUND HAS BEEN REIMBURSED FOR THE AMOUNT PAID PLUS INTEREST AT THE CURRENT LEGAL RATE, 2) THE UNDERLYING JUDGMENT HAS BEEN FULLY SATISFIED AND 3) YOU HAVE FILED AN ORIGINAL APPLICATION FOR A LICENSE.

IF YOU WISH TO CONTEST PAYMENT FROM THE REAL ESTATE RECOVERY FUND, YOU MUST FILE A WRITTEN RESPONSE TO THE APPLICATION. THE ARIZONA STATE REAL ESTATE COMMISSIONER MUST RECEIVE YOUR RESPONSE AT (ADDRESS) WITHIN 35 CALENDAR DAYS AFTER THE DATE THIS NOTICE IS [MAILED, DELIVERED, FIRST PUBLISHED]. YOU MUST ALSO SEND A COPY OF THE RESPONSE TO THE CLAIMANT. IF YOU FAIL TO RESPOND AS REQUIRED, YOU WAIVE YOUR RIGHT TO PRESENT YOUR OBJECTIONS TO PAYMENT.

B. IF THE JUDGMENT DEBTOR HOLDS A CURRENT LICENSE ISSUED BY THE DEPARTMENT, THE NOTICE AND COPY OF THE APPLICATION MAY BE SERVED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO THE JUDGMENT DEBTOR'S LATEST BUSINESS OR RESIDENCE ADDRESS ON FILE WITH THE DEPARTMENT. IF THE JUDGMENT DEBTOR DOES NOT HOLD A CURRENT LICENSE AND IF PERSONAL DELIVERY CANNOT BE EFFECTED BY EXERCISING REASONABLE DILIGENCE, THE CLAIMANT MUST PUBLISH THE NOTICE ONCE A WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE JUDGMENT DEBTOR WAS LAST KNOWN TO RESIDE.

C. IF THE JUDGMENT DEBTOR FAILS TO FILE A WRITTEN RESPONSE TO THE APPLICATION WITH THE DEPARTMENT WITHIN THIRTY-FIVE CALENDAR DAYS AFTER SERVICE UNDER SUBSECTION B OF THIS SECTION OR AFTER THE FIRST PUBLICATION OF THE NOTICE, THE JUDGMENT DEBTOR IS NOT THEREAFTER ENTITLED TO NOTICE OF ANY ACTION TAKEN OR PROPOSED TO BE TAKEN BY THE COMMISSIONER WITH RESPECT TO THE CLAIM.

32-2188.02. Correction of deficiencies in the application

A. IF THE COMMISSIONER DETERMINES THAT A CLAIMANT'S APPLICATION FAILS TO COMPLY SUBSTANTIALLY WITH THE REQUIREMENTS OF SECTION 32-2188 OR RULES ADOPTED PURSUANT TO THIS CHAPTER, THE COMMISSIONER, WITHIN THIRTY CALENDAR DAYS AFTER RECEIVING THE APPLICATION, SHALL MAIL AN ITEMIZED LIST OF DEFICIENCIES TO THE CLAIMANT. FOR THE PURPOSES OF THIS SUBSECTION, "COMPLY

1 SUBSTANTIALLY" MEANS FILING WITH THE DEPARTMENT THE DOCUMENTS THAT ARE
2 MINIMALLY NECESSARY TO PROCESS A CLAIM, INCLUDING AT LEAST A CERTIFIED COPY
3 OF THE JUDGMENT, LEGIBLE COPIES OF DOCUMENTS ESTABLISHING THE UNDERLYING
4 TRANSACTION AND AMOUNTS OF LOSSES SUFFERED AND A STATEMENT CONCERNING AMOUNTS
5 RECOVERED FROM OR ON BEHALF OF THE JUDGMENT DEBTOR.

6 B. THE CLAIMANT MUST RESPOND WITHIN SIXTY CALENDAR DAYS AFTER
7 RECEIVING THE LIST OF DEFICIENCIES BY PROVIDING THE INFORMATION IDENTIFIED
8 BY THE COMMISSIONER. IF THE CLAIMANT FAILS TO CORRECT THE DEFICIENCIES
9 WITHIN SIXTY CALENDAR DAYS, THE DEPARTMENT SHALL CLOSE THE FILE UNLESS THE
10 CLAIMANT REQUESTS AN EXTENSION IN WRITING. A CLAIMANT WHOSE FILE HAS BEEN
11 CLOSED MAY SUBMIT A NEW APPLICATION AS PROVIDED BY SECTION 32-2188.

12 C. THE DEADLINE PRESCRIBED BY SECTION 32-2188.04 FOR THE COMMISSIONER
13 TO MAKE A DECISION ON THE APPLICATION IS SUSPENDED FROM THE DATE THE
14 COMMISSIONER MAILES THE LIST OF DEFICIENCIES TO THE APPLICANT UNTIL THE DATE
15 THE DEPARTMENT RECEIVES THE REQUESTED INFORMATION.

16 32-2188.03. Investigation and discovery

17 IN CONSIDERING AND INVESTIGATING AN APPLICATION, THE DEPARTMENT MAY USE
18 ALL APPROPRIATE MEANS OF INVESTIGATION AND DISCOVERY THAT ARE AVAILABLE
19 PURSUANT TO THIS CHAPTER.

20 32-2188.04. Final decision and order on claim; notice

21 A. THE COMMISSIONER SHALL MAKE A FINAL WRITTEN DECISION AND ORDER ON
22 A CLAIM WITHIN NINETY CALENDAR DAYS AFTER RECEIVING A COMPLETED APPLICATION
23 EXCEPT IN THE FOLLOWING CASES:

24 1. A PRORATION HEARING IS PENDING UNDER SECTION 32-2188, SUBSECTION
25 H.

26 2. AN APPLICATION IS DEFICIENT OR FAILS TO COMPLY SUBSTANTIALLY WITH
27 THE REQUIREMENTS OF SECTION 32-2188 OR RULES ADOPTED PURSUANT TO THIS CHAPTER
28 AS DETERMINED PURSUANT TO SECTION 32-2188.02. THE NINETY DAY TIME PERIOD
29 BEGINS UNDER THIS SUBSECTION WHEN THE DEPARTMENT RECEIVES AN APPLICATION THAT
30 IS SUBSTANTIALLY COMPLETE.

31 3. THE CLAIMANT AGREES IN WRITING TO EXTEND THE TIME FOR MAKING A
32 DECISION.

33 B. IF THE COMMISSIONER FAILS TO RENDER A WRITTEN DECISION AND ORDER
34 ON A CLAIM WITHIN NINETY CALENDAR DAYS, OR WITHIN AN EXTENDED PERIOD OF TIME
35 PROVIDED UNDER SUBSECTION A OF THIS SECTION, THE CLAIM IS CONSIDERED TO BE
36 APPROVED ON THE DAY FOLLOWING THE FINAL DAY FOR RENDERING THE DECISION.

37 C. THE COMMISSIONER MAY APPROVE OR DENY AN APPLICATION OR MAY ENTER
38 INTO A COMPROMISE WITH THE CLAIMANT TO PAY LESS IN SETTLEMENT THAN THE FULL
39 AMOUNT OF THE CLAIM. IF THE CLAIMANT REFUSES TO ACCEPT A SETTLEMENT OFFERED
40 BY THE COMMISSIONER, THE COMMISSIONER SHALL DENY THE CLAIM.

41 D. THE COMMISSIONER SHALL GIVE NOTICE OF A DECISION AND ORDER WITH
42 RESPECT TO THE CLAIM TO THE CLAIMANT AND TO ANY JUDGMENT DEBTOR WHO HAS FILED
43 A TIMELY RESPONSE TO THE CLAIM PURSUANT TO SECTION 32-2188.01 AS FOLLOWS:

44 1. IF THE COMMISSIONER DENIES THE APPLICATION, THE NOTICE SHALL
45 INCLUDE THE FOLLOWING:

1 THE CLAIMANT'S APPLICATION HAS BEEN DENIED. IF THE
2 CLAIMANT WISHES TO PURSUE THE APPLICATION IN COURT, THE CLAIMANT
3 MUST FILE THE APPLICATION IN THE COURT IN WHICH THE UNDERLYING
4 JUDGMENT WAS ENTERED WITHIN SIX MONTHS AFTER RECEIVING THIS
5 NOTICE, PURSUANT TO SECTION 32-2188.05, ARIZONA REVISED
6 STATUTES.

7 2. IF THE COMMISSIONER'S DECISION IS TO MAKE A PAYMENT TO THE CLAIMANT
8 OUT OF THE REAL ESTATE RECOVERY FUND, THE FOLLOWING NOTICE SHALL BE GIVEN TO
9 THE JUDGMENT DEBTOR WITH A COPY OF THE DECISION AND ORDER OF THE
10 COMMISSIONER:

11 THE DECISION OF THE ARIZONA STATE REAL ESTATE COMMISSIONER
12 ON THE CLAIM OF (NAME OF CLAIMANT) IS TO PAY \$_____ FROM THE
13 REAL ESTATE RECOVERY FUND. A COPY OF THAT DECISION AND ORDER IS
14 ENCLOSED.

15 PURSUANT TO SECTION 32-2188, SUBSECTION I, ARIZONA REVISED
16 STATUTES, ALL OF YOUR LICENSES AND LICENSE RIGHTS UNDER TITLE
17 32, CHAPTER 20, ARIZONA REVISED STATUTES, WILL BE TERMINATED
18 EFFECTIVE ON THE DATE OF THE PAYMENT, AND YOU WILL NOT BE
19 ELIGIBLE TO APPLY FOR REINSTATEMENT OF ANY OF THOSE LICENSES
20 UNTIL YOU HAVE SATISFIED THE UNDERLYING JUDGMENT AND REIMBURSED
21 THE REAL ESTATE RECOVERY FUND FOR THIS PAYMENT, INCLUDING
22 INTEREST AT THE PREVAILING LEGAL RATE.

23 IF YOU DESIRE A JUDICIAL REVIEW OF THE COMMISSIONER'S
24 DECISION AND ORDER OR THE TERMINATION OF YOUR LICENSES AND
25 LICENSE RIGHTS, YOU MAY PETITION THE SUPERIOR COURT, IN THE
26 COUNTY IN WHICH THE JUDGMENT THAT IS THE BASIS OF THIS CLAIM WAS
27 RENDERED, FOR A JUDICIAL REVIEW. TO BE TIMELY, YOU MUST FILE
28 THE PETITION WITH THE COURT WITHIN 30 CALENDAR DAYS AFTER
29 RECEIVING THIS NOTICE.

30 32-2188.05. Claimant's right to appeal denial of claim; service
31 of notice of appeal; response; failure to file
32 response

33 A. A CLAIMANT WHOSE APPLICATION IS DENIED PURSUANT TO SECTION
34 32-2188.04 MAY FILE WITHIN SIX MONTHS AFTER RECEIVING NOTICE OF A DENIAL OF
35 THE CLAIM A VERIFIED APPLICATION IN THE COURT IN WHICH JUDGMENT WAS ENTERED
36 IN THE CLAIMANT'S FAVOR FOR AN ORDER DIRECTING PAYMENT OUT OF THE REAL ESTATE
37 RECOVERY FUND BASED ON THE GROUNDS SET FORTH IN THE CLAIMANT'S APPLICATION
38 TO THE COMMISSIONER.

39 B. THE CLAIMANT MUST SERVE A COPY OF THE VERIFIED APPLICATION ON THE
40 COMMISSIONER AND ON THE JUDGMENT DEBTOR AND FILE A CERTIFICATE OR AFFIDAVIT
41 OF SERVICE WITH THE COURT. SERVICE ON THE COMMISSIONER SHALL BE MADE BY
42 CERTIFIED MAIL ADDRESSED TO THE COMMISSIONER. SERVICE ON A JUDGMENT DEBTOR
43 SHALL BE MADE ACCORDING TO SECTION 32-2188.01 AND SHALL INCLUDE THE FOLLOWING
44 NOTICE:

NOTICE

AN APPLICATION HAS BEEN FILED WITH THE COURT FOR A PAYMENT FROM THE REAL ESTATE RECOVERY FUND THAT WAS PREVIOUSLY DENIED BY THE ARIZONA STATE REAL ESTATE COMMISSIONER.

IF THE COURT ORDERS A PAYMENT FROM THE REAL ESTATE RECOVERY FUND, ALL OF YOUR LICENSES AND LICENSE RIGHTS UNDER TITLE 32, CHAPTER 20, ARIZONA REVISED STATUTES, WILL BE AUTOMATICALLY TERMINATED.

IF YOU WISH TO DEFEND IN COURT AGAINST THIS CLAIM, YOU MUST FILE A WRITTEN RESPONSE WITH THE COURT WITHIN 30 CALENDAR DAYS AFTER YOU ARE SERVED WITH A COPY OF THE APPLICATION. IF YOU FAIL TO FILE A WRITTEN RESPONSE, YOU WAIVE YOUR RIGHT TO DEFEND AGAINST THE CLAIM.

C. THE COMMISSIONER AND THE JUDGMENT DEBTOR EACH MUST FILE A WRITTEN RESPONSE WITHIN THIRTY CALENDAR DAYS AFTER BEING SERVED WITH THE APPLICATION UNDER SUBSECTION B OF THIS SECTION. THE COURT SHALL THEREAFTER SET THE MATTER FOR HEARING ON THE PETITION OF THE CLAIMANT. THE COURT SHALL GRANT A REQUEST OF THE COMMISSIONER FOR A CONTINUANCE OF AS MUCH AS THIRTY CALENDAR DAYS AND, ON A SHOWING OF GOOD CAUSE BY ANY PARTY, MAY CONTINUE THE HEARING FOR SUCH TIME AS THE COURT CONSIDERS TO BE APPROPRIATE.

D. AT THE HEARING, THE CLAIMANT MUST ESTABLISH COMPLIANCE WITH THE REQUIREMENTS OF SECTION 32-2188.

E. IF THE JUDGMENT DEBTOR FAILS TO FILE A WRITTEN RESPONSE TO THE APPLICATION, THE COMMISSIONER MAY COMPROMISE OR SETTLE THE CLAIM AT ANY TIME DURING THE COURT PROCEEDINGS AND, ON JOINT PETITION OF THE APPLICANT AND THE COMMISSIONER, THE COURT SHALL ISSUE AN ORDER DIRECTING PAYMENT OUT OF THE REAL ESTATE RECOVERY FUND.

Sec. 7. Section 32-2191, Arizona Revised Statutes, is amended to read:

32-2191. Commissioner's standing in court

~~When the commissioner receives notice, as provided in section 32-2188,~~
The commissioner may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action he may deem THE COMMISSIONER CONSIDERS appropriate on the behalf and in the name of the real estate recovery fund and take recourse through any appropriate method of review on behalf of, and in the name of, the real estate recovery fund.

Sec. 8. Section 32-2192, Arizona Revised Statutes, is amended to read:

32-2192. Subrogation of rights; collection

A. BEFORE RECEIVING PAYMENT FROM THE FUND, A CLAIMANT MUST COMPLETE AND EXECUTE, AS JUDGMENT CREDITOR, AN ASSIGNMENT OF JUDGMENT LIEN AND NOTICE OF SUBROGATION AND ASSIGNMENT OF RIGHTS TO THE CLAIMANT'S JUDGMENT ON A FORM PROVIDED BY THE DEPARTMENT.

B. ~~When, upon the order of the court,~~ IF the commissioner has paid from the real estate recovery fund any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all his THE right, title and

1 interest in the judgment to the commissioner. and THE COMMISSIONER MAY
2 RECORD THE ASSIGNMENT OF JUDGMENT LIEN AND NOTICE OF SUBROGATION AND
3 ASSIGNMENT OF RIGHTS. Any amount and interest so recovered by the
4 commissioner on the judgment shall be deposited to the fund.

5 C. IF THE COMMISSIONER IS SUBROGATED TO A CLAIMANT'S RIGHTS AS
6 JUDGMENT CREDITOR, THE CLAIMANT SHALL NOT FILE A FULL OR PARTIAL SATISFACTION
7 OF JUDGMENT WITHOUT THE COMMISSIONER'S PRIOR WRITTEN CONSENT.

8 D. THE ATTORNEY GENERAL SHALL BRING ANY ACTIONS TO RECOVER AMOUNTS
9 PAID FROM THE FUND INCLUDING INTEREST, ATTORNEY FEES AND COSTS OF COLLECTION
10 PURSUANT TO THIS CHAPTER IN THE NAME OF THIS STATE IN THE SUPERIOR COURT IN
11 THE COUNTY IN WHICH THE VIOLATION OCCURRED OR IN A COUNTY IN WHICH THE
12 COMMISSIONER MAINTAINS AN OFFICE. A CERTIFIED COPY OF A COMMISSIONER'S ORDER
13 REQUIRING PAYMENT FROM THE FUND MAY BE FILED IN THE OFFICE OF THE CLERK OF
14 THE SUPERIOR COURT. THE CLERK SHALL TREAT THE COMMISSIONER'S ORDER IN THE
15 SAME MANNER AS A JUDGMENT OF THE SUPERIOR COURT. A COMMISSIONER'S ORDER SO
16 FILED HAS THE SAME EFFECT, AND MAY BE RECORDED, ENFORCED OR SATISFIED IN A
17 SIMILAR MANNER, AS A JUDGMENT OF THE SUPERIOR COURT. NO FILING FEE IS
18 REQUIRED UNDER THIS SUBSECTION.

~~APPROVED BY THE GOVERNOR APRIL 22, 2002.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 22, 2002.~~

Passed the House March 21, 2002,

Passed the Senate April 15, 2002

by the following vote: 53 Ayes,

by the following vote: 27 Ayes,

0 Nays, 7 Not Voting

0 Nays, 3 Not Voting

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16 day of April, 2002

at 1:31 o'clock P. M.

Secretary to the Governor

Approved this 22 day of

April, 2002,

at 1:23 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of April, 2002

at 4:40 o'clock P. M.

Secretary of State

H.B. 2008